4223.

SUPREME COURT OF THE UNITED STATES.

No. 232.

ROBERT R. BARROW, PLAINTIFF IN ERROR,

vs.

NATHANIEL B. HILL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF LOUISIANA.

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GIDEON, Print.

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

NATHANIEL B. HILL
vs.
ROBERT R. BARROW. } No. 1831.

Pleas and proceedings before the honorable the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, being the December term, A. D. 1849, of the said court, held at the city of New Orleans, in the district aforesaid, on the fourth day of April, A. D. 1850.

Be it remembered, that heretofore, to wit, on the 18th day of April, 1849, came the plaintiff, Nathaniel B. Hill, by his attorneys, Prentiss & Finney, and filed in the clerk's office of the said court a petition, which is in the words and figures following, to wit:

To the honorable the judge of the United States circuit court, for the eastern district of Louisiana.

The petition of Nathaniel B. Hill, who is a citizen of the State of South Carolina, and resides therein, respectfully shows, that Robert R. Barrow, who is a citizen of the State of Louisiana, and resides in the eastern district of said State, is justly indebted to your petitioner in the sum of two thousand dollars, with interest at the rate of eight per cent. per annum from the fifteenth day of February, 1849, until paid; for this, to wit, that your petitioner is the holder and owner of a promissory note for the sum of two thousand dollars, with interest at the rate of eight per cent. per annum from the date of maturity until paid, which said note was drawn and signed by the said Barrow at New Orleans, on the 12th day of February, 1848, for the said sum of $2,000, with interest at the rate aforesaid from the date of maturity until paid, payable to the order of the said Barrow, twelve months after date, at the Bank of Louisiana, by the said Barrow endorsed in blank; all of which will more fully appear by reference to the said note, which is herewith annexed for reference for greater certainty. Your petitioner further avers, that the said note, drawn and endorsed as aforesaid by the said Barrow, was by him delivered to your petitioner for value received, and that on the day of its maturity it was duly presented for payment at the place where it was made payable, and payment was demanded, which was refused; whereupon it was duly protested for non-payment; all of which will more fully appear by the act of protest herewith annexed for reference.

Wherefore your petitioner prays that the said defendant be duly cited to answer this petition, and in due course of law be condemned to pay your petitioner his debt aforesaid, namely, $2,000, with eight per cent. per annum interest, from February 15th, 1849, until paid, and cost of suit and general relief.

PRENTISS AND FINNEY,
Attorneys.

Protest annexed.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this fifteenth day of February, in the year one thousand eight hundred and forty-nine, at the request of R. M. Davis, esq., cashier of the Bank of Louisiana, holder of the original note whereof a true copy is on the reverse hereof written, I, Hilary B. Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented the said note to *to* the proper book-keeper at the Bank of Louisiana in this city, where the same is made payable, by my deputy, D. A. Bickel, who demanded payment thereof, and who was answered that no funds had been deposited there to pay the same. Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note, as against all other whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said note. Thus done and protested in the presence of D. A. Bickel and H. Rareshide, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

H. B. CENAS,
Notary public.

$2,000. NEW ORLEANS, 12*th February*, 1848.

Twelve months after date I promise to pay, to my own order, two thousand dollars, for value received, with interest at eight per cent. per annum from maturity until paid, (payable and negotiable at the Bank Louisiana.)

R. R. BARROW.

Endorsed—R. R. BARROW.

PETER CORNEY, Jr.

New Orleans, 12th [Feb.,] 1848.

And afterwards, to wit, on the 16th May, 1849, came the defendant, by his counsel, Isaac T. Preston, esq., files in the clerk's office of said court the following as his answer:

Answer.

In the matter of NATH. B. HILL
vs.
R. R. BARROW. } No. 1831.

United States circuit court, New Orleans.

Robert Ruffin Barrow, a resident of the parish of *Terrebonne*, in the State of Louisiana, for answer to the petition in this court filed against

him by Nathan B. Hill, of the State of South Carolina, in the above entitled and numbered suit, says, that he denies all and singular the allegations and averments in the said petition contained and set forth, except that he executed the note sued on. Further answering he says, that the said note was given to the plaintiff by this respondent as the consideration of two slaves, one named Ruben, aged about thirty years; and the other named Rhody, aged about thirty years, which slaves were conveyed to him by the said plaintiff about the time of the date of the note sued [on,] with full legal guarantee.

Now, your respondent avers, and is prepared to prove, that at the time of the said sale and prior thereto, the said slaves were both affected with redhibitory maladies and defects, which had your respondent known before the sale he would never have purchased them. That the said slave Rhody was at and prior to the sale subject to epileptic fits, or a disease of a similar character, and also of a falling of the womb, which are incurable, and which rendered, and still renders, her incapable of performing such labor as might reasonably be required of her; and that the slave Ruben was at the time of the sale previous thereto, and has been ever since, affected with pulmonary thesis or consumption, which is also incurable, and is also incapable of performing such labors as might be reasonably required of him; and that both slaves were at the time of the sale, and now are, of no value whatever to respondent. That the said maladies in both slaves discovered themselves within fifteen days after the sale, at the date of which neither of them had been eight months in the State of Louisiana. That your respondent has been unable heretofore to make to the said seller any tender of the said slaves, as he is a non-resident of the State, and has no agent therein to the knowledge of respondent. Your respondent, therefore, has the legal right to claim the avoidance of the sale of said slaves, and the restoration to him of the note sued on. Wherefore he prays that it be decreed by this honorable court that the demand of the plaintiff be rejected at his costs; that the sale of the slaves Ruben and Rhody be rescinded, cancelled, and annulled; and that the note sued on be restored to respondent, and that the costs of this suit be paid by plaintiff. And for general relief.

ILLSEY AND PRESTON,
Attorneys for Respondent.

And afterwards, to wit, on the 2d April, 1850, the following entry was made on the minutes of said court:

N. B. Hill
vs. } 1831.
R. R. Barrow.

This cause having been assigned for this hour, was called up for hearing; S. S. Prentiss, esq., appearing for the plaintiff, and Hunley, esq., for the defendant. When, after argument of counsel, the same was ordered to be continued until to-morrow, the 3d instant, for the purpose of hearing the testimony of Fisher, esq., on behalf of defendant.

And afterwards, to wit, on the 3d April, 1850, the following entry was made on the minutes:

N. B. Hill
vs.
R. R. Barrow.

This cause having been left open for the purpose of taking the testimony of Fisher, a witness on behalf of defendant, said witness was this day examined. The testimony of Botts, esq., a witness on behalf of defendant, was also heard, when it was ordered that his cause be continued until to-morrow at half after nine o'clock, for the purpose of hearing testimony on behalf of plaintiff.

And afterwards, on the 4th April, 1850, the following was entered of record on the minutes of said court:

N. B. Hill
vs.
R. R. Barrow.

This cause, as continued from yesterday, was resumed. P. Conrey, esq., sworn and examined as witness on behalf of plaintiff; when, after argument of counsel, the same was submitted to the court, and taken under advisement.

Hill
vs.
Barrow.

Circuit court of the United States, in and for the eastern district of Louisiana.

Hon. Theodore H. McCaleb presiding alone. December term, 1849.

Be it remembered, that at the trial of this cause, at the term of the court aforesaid, the counsel for the defendant moved the court for a continuance, on the ground that William C. Fisher, a material witness for the defendant, is absent, or does not appear on the trial of this cause; that said Fisher is in the city at this time; that defendant desired the clerk of this court to summon said Fisher, but that the marshal has not been able to find him and serve him with a subpœna. That the defendant expects to prove by said Fisher that this note sued on was given by defendant to plaintiff for the purchase of two slaves, Rhody and Ruben. That the slave Rhody was not represented or declared by plaintiff to be afflicted with epileptic fits or any other incurable disease, and that the bill of sale did not declare it; that Reuben was warranted and declared to be a superior blacksmith, and that this quality was the principal motive of defendant in purchasing him. That at the price negroes were bringing at the time of said purchase the sum of two thousand dollars was the full value of, if not a high price for, negroes of the same description as Reuben and Rhody, if perfectly sound; that the slaves had not been in the State two months previous to the purchase of them by defendant.

The defendant further declares that he was not induced or consented to said Fisher's absence; to all of which the defendant offered to swear, but the court overruled the motions on the ground that it appeared by the declaration of the counsel for defendant, that the witness Fisher was the day before seen by him in the city of New Orleans, and therefore the court declared that the testimony of the said witness would be received before the conclusion of the trial. Accordingly, the next morning, the witness appeared in court, and was regularly examined by the counsel of both defendant and plaintiff, and his testimony was commented on by counsel before the cause was finally submitted; whereupon the counsel for the defendant excepts to the ruling of the court, and tenders this his bill of exceptions, praying that the same may be signed and made a part of this record.

THEO. H. McCALEB,
United States Judge.

HILL
vs.
BARROW.

Circuit court of the United States, in and for the eastern district of Louisiana.

Honorable Judge Theodore H. McCaleb presiding alone. December term, 1849.

Be it remembered, that at the trial of this cause before the court, at the term aforesaid, the counsel for the defendant moved the court for a continuance, on the grounds that a commission was issued by this court on the 11th March, 1850, to take the testimony of William S. Green, a resident of the State of Kentucky, but supposed to be at that time on a plantation owned by said Green in the parish of Terrebonne, Louisiana. That the testimony of said Green is important, material, and necessary to the defence. That due diligence has been used to have this testimony of said Green taken, but that the said commission has not yet been returned to this court; to all of which the defendant offered to swear, but the court overruled the motion, on the ground that the commission had issued some time after issue joined, and subject to the right of the adverse party to have the case tried when regularly docketed; and also upon the ground that a sufficient time had been allowed for the return of said commission. Whereupon the counsel for defendant excepts, and the ruling of the court tenders this his bill of exceptions, praying that the same may be signed and made a part of the record.

THEO. H. McCALEB,
United States Judge.

NATHANIEL B. HILL
vs.
ROBERT R. BARROW.

This cause having been argued and submitted to the court on a former day of this term, and the court being satisfied that the law and the

evidence are in favor of the plaintiff, doth order, adjudge, and decree, that the plaintiff, Nathaniel B. Hill, do have and recover judgment against the defendant, Robert R. Barrow, for the sum of two thousand dollars, with interest therein at the rate of eight per cent. per annum from the fifteenth day of February, 1849, until paid, and three dollars costs of protest, and costs of suit to be taxed.

Judgment rendered 11th April, 1850.

Signed 18th April, 1850.

THEODORE H. McCALEB, [SEAL.]
U. S. Judge.

Petition for writ [of] error.

To the honorable Theodore H. McCaleb, judge of the circuit court of the United States, in and for the eastern district of Louisiana.

The petition of Robert Ruffin Barrow respectfully represents, that petitioner is informed, and believes, that there is error in the proceedings and final judgment rendered against him by this court, in the suit of Nathaniel Hill against this petitioner.

Wherefore the petitioner prays that the annexed bond be considered, that a writ of error be granted to operate as a supersedeas to the Supreme Court of the U. States, and that all other proceedings be had in the premises which the premises may require.

H. L. HUNLEY,
Of counsel.

And afterwards, to wit, on the 20th April, 1850, the following entry was made on the minutes of the court:

N. B. HILL
vs.
R. R. BARROW.

On motion of H. L. Hunley, esq., of counsel for defendant, and on filing his petition representing to the court that the said defendant felt aggrieved at the judgment rendered herein, and praying for a writ of error, returnable to the next term of the Supreme Court, and that the same may operate as a supersedeas, it is ordered that the prayer of said petitioner be granted on the defendant's furnishing bond, with good and solvent security, in the penal sum of three thousand dollars, conditionally, as the law requires.

United States of America, circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 12 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings in the case of Nathaniel

B. Hill *vs.* Robert R. Barrow, No. 1831 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of September, A. D. 1850.

[SEAL.] J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 12th day of September, A. D. 1850.

THEO. H. McCALEB. [SEAL.]

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the circuit court of the United States, in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Nathaniel B. Hill and Robert R. Barrow, a manifest error hath happened, to the great damage of the said Robert R. Barrow, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 20th of April, in the year of our Lord one thousand eight hundred and fifty.

J. W. GURLEY,
Clerk of the United States circuit court,
and eastern district of Louisiana.

The United States of America, to Nathaniel B. Hill, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of

error filed in the clerk's office of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, wherein Robert R. Barrow is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twentieth day of April, in the year of our Lord one thousand eight hundred and fifty.

THEO. H. McCALEB, *U. S. Judge.*

Marshal's return.

Received April 20th, 1850, and on the same day served a copy of the within citation in error on Nathaniel B. Hill, plaintiff, in the manner following, to wit, by handing the same to John Finney, esq., one of the firm of Prentiss & Finney, attorneys for said Hill, at New Orleans, Nathaniel B. Hill at the time being absent from this district.

CHAS. A. LABUZAN,
D'y Marshal.

Mr. HUNLEY.